REMARKS

The invention is directed to a phonological awareness, phonological processing and reading skill training system and method that trains and measures one or more different skills to train those one or more different skill areas.

Applicant appreciates the Examiner's indication that Claims 78-9 and 93 are allowed and Claims 57, 74-77, 81-92, 95, 98-99, 101-103, 105, 108-109, 111-113, 115, 118-119, 121-123, 125, 128-129 and 131- 133 are rejected as being dependent upon a rejected based claim, but would be allowable if rewritten in independent form.

Information Disclosure Statement

Applicant requests the Examiner to consider the Information Disclosure Statement submitted with this response.

REJECTIONS

In response to the Examiner's rejection under 35 USC § 101 of Claims 1-56 and 58- 73 as claiming the same invention as that of Claims 1-68 of prior US Patent No. 6,299,452 (the "'452 Patent"), Applicant respectfully traverses the rejection for some claims and overcomes the rejection for other claims as set forth below. In response to the Examiner's rejection of Claims 80, 94, 96-7, 100, 104, 106-107, 110, 114, 116-117, 120, 124, 126-127 and 130 under the judicially created doctrine of double patenting over Claims 1-3 and 52 of US Patent No. 6,299,452, the rejection is deemed moot in view of the terminal disclaimer filed herewith as set forth below.

Statutory Double Patenting Rejection under 35 USC 101

Applicant respectfully submits that statutory double patenting rejection of some of the claims is improper and should be withdrawn. In particular, MPEP § 804 IIA (pages 800-20 – 21 in the Eighth Edition of the MPEP) specifies the standard for a statutory double patenting rejection and a test to apply to determine if the rejection is proper. The MPEP states, " A reliable

test for double patenting under 35 U.S.C. 101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent. *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970)" (MPEP § 804 IIA)

In the present application, Claim 1 (and the other independent claims) are broader than the issued claims of the '452 Patent since the issued independent claims all recite a recommender element (see Claim 1 of the '452 Patent for example). Under the test set forth above, the independent claims of the present application could be literally infringed without literally infringing a corresponding claim in the '452 Patent. For example, a system which had a server computer having one or more tests and one or more client computers with a display device, a device for receiving a user response and a device for communicating a user's response back to the server would literally infringe pending Claim 1, but would not literally infringe Claim 1 of the '452 Patent since the system does not include a recommender which an element of each independent claim of the '452 Patent. Therefore, the independent claims of the application (Claims 1, 19, 37 and 55) have been improperly rejected under statutory double patenting and the rejection should be withdrawn.

The dependent claims directed to a recommender (Claims 2, 20, 38 and 56) have been cancelled herein to overcome the statutory double patenting rejection.

The other dependent claims (which depend from the independent claims) are also improperly rejected under statutory double patenting since those claims could also be literally infringed without literally infringing the claims of the '452 Patent. Again, as an example, Claim 3 would be literally infringed by a system having a system which had a server computer having one or more tests and one or more client computers with a display device, a device for receiving a user response, a device for communicating a user's response back to the server and wherein the server has a questionnaire. However, that same system would not literally infringe Claim 2 of the '452 Patent since the system would also need to have a recommender. Therefore, the currently pending dependent claims (Claims 3 – 18, 21- 36, 39 – 54 and 58 – 73) have also been improperly rejected under statutory double patenting and the rejection of those claims should be withdrawn.

Judicially Created Doctrine of Double Patenting Rejection

In response to the rejection of Claims 80, 94, 96-7, 100, 104, 106-107, 110, 114, 116-117, 120, 124, 126-127 and 130 under the judicially created doctrine of double patenting, Applicant is submitting herewith a terminal disclaimer. Therefore, the rejection is overcome and these claims are in condition for allowance.

CONCLUSION

In view of the above arguments, it is respectfully submitted that Claims 1, 3- 19, 21 – 37, 38 – 55 and 57 - 133 are allowable for the reasons set forth above and early allowance of the application is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Deposit Account No. 07-1896. The Examiner is invited to contact Applicant's Attorney at (650) 320-7426 if there are any questions or if the Examiner feels that a telephone conference will speed the prosecution of this application.

Respectfully submitted,

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Dated: July 19, 2002

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